

BEFORE THE TENNESSEE REGULATORY AUTHORITY
TESTIMONY OF CHERYL L. BURSH
ON BEHALF OF
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC
AND TCG MIDSOUTH, INC.

DOCKET NO. 97-00309

July 12, 2002

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Cheryl L. Bursh. My business address is 1200 Peachtree Street,
3 Atlanta, Georgia.

4 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
5 **BACKGROUND.**

6 A. I am employed by AT&T Corp. as a District Manager. I am responsible for
7 performance measurement and remedy plan advocacy for AT&T in the states
8 served by BellSouth Telecommunications, Inc. ("BellSouth"). My area of
9 expertise is the development of an effective methodology for measuring
10 BellSouth's performance. I have represented AT&T in several regulatory
11 proceedings, including performance measurement workshops and hearings
12 conducted in Alabama, Louisiana, Florida, North Carolina, South Carolina,
13 Tennessee and Georgia. I have held a variety of management positions at AT&T
14 for 20 years, including strategic planning, sales of large business systems and
15 telecommunications services, system development for operation support systems,
16 product marketing and technical support for computer systems. I have a Bachelor

1 of Science Degree from Johnson C. Smith University and a Master of Science
2 Degree from George Washington University.
3

4 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

5 A. In May 2002, the Tennessee Regulatory Authority (“TRA” or “Authority”)
6 established a performance measurement and remedy plan for Tennessee.¹ In June
7 2002, the TRA refined its original Order.² My testimony discusses why the TRA
8 should not make any compliance determination under Section 271 of the
9 Telecommunications Act of 1996 (“Act”)³ until BellSouth submits performance
10 reports and data prepared in accordance with the TRA’s June 28, 2002 Order. My
11 testimony demonstrates: (1) that the Authority has established performance
12 measures, performance standards and remedies to evaluate and to enforce
13 BellSouth’s compliance with Section 271 of the Act in this state; and (2) that the
14 significant differences between what Tennessee has ordered and the Georgia
15 Service Quality Measurements plan (“SQM”) precludes any Section 271
16 determination based on the Georgia SQM. Finally, my testimony explains that
17 the Georgia SQM under which BellSouth is reporting data does not comply with
18 the Georgia Public Service Commission’s (“Georgia Commission’s”) orders.⁴

¹ Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms, *In Re Docket To Establish Generic Performance, Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, Docket No. 01-00193 (May 14, 2002) (“May 14 Order”).

² Amended Final Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms, *In Re Docket To Establish Generic Performance, Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, Docket No. 01-00193 (June 28, 2002) (“Tennessee Order” or “June 28 Order”).

³ Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 251 et seq.

⁴ See, e.g., Order, *In re: Performance Measurements For Telecommunications Interconnection, Unbundling and Resale*, Docket No. 7892-U (Jan. 12, 2001) (“Georgia Order” or “Jan. 12 Order”).

1 **Q. WHAT ARE PERFORMANCE MEASURES AND WHY ARE THEY**
2 **IMPORTANT?**

3 A. Performance measures provide a means of evaluating the level of service
4 Incumbent Local Exchange Carriers (“ILECs”) offer to Competing Local
5 Exchange Carriers (“CLECs”). Early in the process of implementing the
6 Telecommunications Act of 1996, the FCC emphasized that ILECs’
7 nondiscriminatory support of CLECs is critical to the ultimate development of
8 local competition. (See First Report and Order, *Implementation of Local*
9 *Competition Provisions in the Telecommunications Act of 1996*, CC Docket No.
10 96-98 ¶ 315 (rel. August 8, 1996) (“*Local Competition First Report and Order*”).)

11
12 Whether entering the local market via interconnection, resale, or the use of
13 unbundled network elements, CLECs depend upon BellSouth’s performance in
14 providing service to their customers. As the TRA has remarked, “the purpose of
15 performance measurements, benchmarks and self-effectuating enforcement
16 mechanisms is to provide a mechanism for establishing, assessing and enforcing
17 the level of service BellSouth provides to CLECs to assure nondiscriminatory
18 access to all essential UNEs.” (*June 28 Order* at 4 (citation omitted).)

19
20 Accordingly, in order for the TRA and CLECs to ensure that BellSouth is meeting
21 its obligations under the Act, BellSouth must be required to fully and accurately
22 report its performance in accordance with the Authority’s Order. The
23 interdependent nature of the relationship between CLECs and BellSouth makes
24 measuring BellSouth’s performance vital to the development of local competition
25 in Tennessee.

1 **Q. HAS THE TRA ISSUED ITS ORDER SETTING FORTH**
2 **PERFORMANCE MEASURES AND STANDARDS FOR BELL SOUTH?**

3 A. Yes. The TRA conducted a separate proceeding in Docket 01-00193 to establish
4 a permanent set of performance measurements for Tennessee. In Docket 01-
5 00193, the TRA performed its analysis to determine the performance measures,
6 performance standards, and enforcement mechanisms necessary to ensure the pro-
7 competitive principles of the Act are met in Tennessee. The Authority issued its
8 Order on May 14, 2002. After motions for clarification and reconsideration were
9 filed, the TRA further clarified its May 14 Order during proceedings held on June
10 18, 2002. The TRA issued its final order on June 28, 2002.

11 **Q. PLEASE COMMENT ON BELL SOUTH'S STATEMENT THAT IT WILL**
12 **SEEK RECONSIDERATION AND A STAY OF THE TRA'S JUNE 28**
13 **ORDER.**

14 A. Shortly after the TRA issued its June 28, 2002 Order, BellSouth indicated that it
15 would seek reconsideration and a stay of the Order "to provide BellSouth
16 sufficient time to implement" the TRA's requirements. (See Letter from
17 BellSouth to the TRA, dated July 3, 2002 at 1 (attached as CLB- 1).) The TRA
18 should not grant BellSouth's request. BellSouth has known of the substantial
19 changes required in Tennessee since the TRA issued its initial performance
20 measurements Order in May 2002. BellSouth has had sufficient time in which to
21 comply with the TRA's determination. The TRA has established the measures
22 and enforcement mechanisms it believes are necessary to foster competition in
23 Tennessee. Accordingly, the Authority should require BellSouth to implement a
24 Tennessee SQM as set forth in the June 28 Order.

1 **Q. SHOULD THE TRA DEFER ITS SECTION 271 EVALUATION UNTIL**
2 **BELLSOUTH REPORTS PERFORMANCE DATA IN COMPLIANCE**
3 **WITH THE TENNESSEE ORDER?**

4 A. Yes. The TRA has stated it “adopted a comprehensive set of measures intended
5 to capture relevant data to accurately measure the level of service BellSouth
6 provides to CLECs in Tennessee.” (*June 28 Order* at 34.) In addition, the TRA
7 has established the various benchmarks or analogs for a multitude of measures.
8 These performance standards “represent levels of service that BellSouth *must*
9 achieve in order to meet the requirement of nondiscriminatory access.” *Id.* at 41
10 (emphasis added). Without reviewing data that is consistent with what the TRA
11 deems appropriate for Tennessee, the TRA and CLECs will be unable to
12 determine whether BellSouth has met the performance standards set by this
13 Authority or whether BellSouth is provisioning different types of services at
14 parity with its own retail operations in Tennessee.

15 **Q. DOES THE FCC SUPPORT YOUR VIEW?**

16 A. Yes, the FCC has recognized that
17 . . . metric definitions and incumbent LEC operating systems will
18 likely vary among states, and that individual states may set
19 standards at a particular level that would not apply in other states
20 and that may constitute more or less than the checklist requires.
21 Therefore, in evaluating checklist compliance in each application,
22 we consider the BOC’s performance within the context of each
23 respective state. For example, where a state develops a
24 performance benchmark with input from affected competitors and
25 the BOC, such a standard may well reflect what competitors in the
26 marketplace feel they need in order to have a meaningful
27 opportunity to compete. . . .[I]n making our evaluation we will
28 examine whether the state commission has adopted a retail
29 analogue or a benchmark to measure BOC performance and then
30 review the particular level of performance the state has required.⁵

⁵ Memorandum Opinion and Order, *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a SouthWestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to*

1
2 Thus, consistent with FCC guidance, in order to obtain an accurate picture of
3 BellSouth's performance within Tennessee, the TRA should only make its
4 Section 271 recommendation based upon the performance measures and standards
5 it has ordered BellSouth to implement in Tennessee.

6 **Q. HAS THE TRA INDICATED WHAT PERFORMANCE MEASURES**
7 **DATA IT WILL CONSIDER WHEN IT CONDUCTS ITS SECTION 271**
8 **EVALUATION?**

9 A. Yes. In its June 28, 2002 Order, the TRA emphasized the importance of its
10 performance measures plan to any future Section 271 determination. The TRA
11 stated,

12 [t]he performance measurements, benchmarks and enforcement
13 mechanisms adopted herein provide a vehicle for determining
14 whether BellSouth provides nondiscriminatory access to its
15 network elements, one of the requirements that must be satisfied
16 before BellSouth's application to provide interLATA long distance
17 service pursuant to 47 U.S.C. § 271 can be approved.

18 *June 28 Order* at 5.

19 Additionally, the TRA has emphasized that its performance plan provides the
20 "framework for gathering and utilizing all relevant information" related to the
21 issue of whether BellSouth provides CLECs nondiscriminatory access as required
22 by Section 271 of the Act. *Id.*

23 **Q. BELLSOUTH IS URGING THE TRA TO RELY ON PERFORMANCE**
24 **MEASURES DATA GENERATED UNDER THE GEORGIA SQM FOR**
25 **PURPOSES OF ITS SECTION 271 EVALUATION. DO YOU AGREE**
26 **WITH BELLSOUTH'S APPROACH?**

27 A. No. The TRA has established the performance measures, performance standards,
28 and remedy plan it believes are necessary to promote competition in this state.

Provide In-Region InterLATA Services in Texas, 15 FCC Rcd. 18,354 ¶¶ 55-56 (F.C.C. June 30, 2000) (No. CC00-65, FCC00-238) ("SWBT Texas Order") (emphasis added).)

1 Even BellSouth recognizes that the purpose of the TRA's generic performance
2 measurements docket was to determine "the performance measurements and
3 associated enforcement mechanisms necessary to ensure that BellSouth offers
4 Tennessee CLECs interconnection and access to network elements on a
5 nondiscriminatory basis, pursuant to the requirements of the [Act]." (See July 16,
6 2001 Deposition of David A. Coon in Docket 01-00193 at 4 (excerpts attached as
7 Exhibit CLB-2).) The standards by which BellSouth's performance will be
8 measured have been established, and it is inappropriate for BellSouth to rely on an
9 SQM from Georgia in an effort to expedite Section 271 approval in Tennessee.

10 **Q. THE FCC RECENTLY GRANTED BELL SOUTH INTERLATA**
11 **AUTHORITY IN GEORGIA. WHY CAN'T THE TRA RELY ON THE**
12 **GEORGIA SQM?**

13 A. There are two reasons why it would be inappropriate for the TRA to base its
14 Section 271 decision on the Georgia SQM. First, the FCC recognizes that states
15 may implement state-specific performance measures that reflect the level of
16 competition required by the particular state.⁶ The TRA has determined the
17 Tennessee-specific performance measures necessary to promote local
18 competition. Overall, these Tennessee-specific measures are more stringent than
19 what Georgia has required. Indeed, in connection with his discussion of the
20 enforcement plan approved in Georgia, Director Greer stated he "respectfully
21 [does] not agree with the Georgia plan's approach." (Excerpt of Directors'
22 Conference, Docket No. 01-00193, June 18, 2002 at 11:4-5 ("Dir. Conf.")
23 (attached as Exhibit CLB-3).)
24

⁶ See Memorandum Opinion and Order, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, 2002 WL 992213 (F.C.C., May 15, 2002) (NO. FCC 02-147, 02-35) App. D ¶¶ 8, 28.

1 In addition, by statute, the TRA is required to promulgate rules and issue orders to
2 ensure that “all telecommunications service providers” make available
3 nondiscriminatory access to all essential unbundled network elements. (Tenn.
4 Code. Ann. § 65-4-124 (a) and (b).) The TRA thus has a statutory obligation to
5 determine the level of access BellSouth must provide in Tennessee. The TRA has
6 met this obligation and has established more rigorous standards than those used
7 by the FCC.

8 **Q. IS THE TRA’S ORDER DIFFERENT FROM THE GEORGIA SQM?**

9 A. Yes. The TRA’s Order is significantly different from the Georgia SQM in areas
10 CLECs believe are critical to the development of local competition. The TRA’s
11 performance measures plan requires state-specific reporting for most performance
12 measures; requires additional disaggregation for a large number of measures;
13 establishes more stringent performance benchmarks; and includes additional
14 measures.

15 **Q. YOU MENTIONED THAT THE TENNESSEE ORDER REQUIRES**
16 **GREATER STATE-SPECIFIC REPORTING THAN THE GEORGIA**
17 **SQM. HOW MANY MEASURES DOES THIS AFFECT?**

18 A. The TRA has determined that BellSouth must provide state-specific performance
19 data for many measures for which Georgia permitted BellSouth to submit regional
20 data. The measures include:

- 21 • Interface Availability (Preordering/Ordering);
- 22 • Interface Availability (Maintenance and Repair);
- 23 • % Flow-through Service Request – Summary;
- 24 • Service Order Accuracy;
- 25 • % Database Update Accuracy;

- 1 • % NXXs and LRNs loaded by the LERG Effective Date;
- 2 • Usage Data Delivery Accuracy;
- 3 • Usage Data Delivery Completeness;
- 4 • Usage Data Delivery Timeliness;
- 5 • Recurring Charge Completeness;
- 6 • Nonrecurring Charge Completeness; and
- 7 • Mean Time to Notify of Network Outage.

8
9 **Q. BELLSOUTH IS URGING THE TRA TO RELY ON REGIONAL**
10 **PERFORMANCE MEASUREMENT DATA TO SUPPORT ITS SECTION**
11 **271 APPLICATION. WHAT IS WRONG WITH BELLSOUTH'S**
12 **APPROACH?**

13 A. At the outset, BellSouth is asking the Authority to ignore its Order. The
14 Authority was clear that BellSouth *must* comply with its Order to establish that it
15 provides nondiscriminatory access. (*See June 28 Order* at 41 (the performance
16 measurements adopted by the Authority “*shall* be used to evaluate whether
17 BellSouth is providing nondiscriminatory access to its network”) (emphasis
18 added).) In addition, the TRA has recognized that if BellSouth reported
19 performance data on a regional basis, the TRA would have no way to gauge
20 accurately whether BellSouth is performing in a nondiscriminatory manner in
21 Tennessee. For example, regional aggregation of performance measurement data
22 would enable BellSouth to mask discriminatory performance in Tennessee by
23 combining its deficient Tennessee performance with satisfactory performance in
24 other states. By aggregating its results, BellSouth can achieve a satisfactory
25 performance measurement, but still be providing discriminatory service in
26 Tennessee.

1 Reporting regional aggregated data can allow BellSouth to avoid making penalty
2 payments for poor performance that would otherwise be payable under the
3 remedy plan. The TRA has recognized this danger. “BellSouth’s proposed
4 methods of aggregation under [BellSouth’s proposed performance plan] would
5 also give BellSouth the discretionary ability to mask positively or negatively its
6 state-specific exposure to enforcement mechanisms.” (*Dir. Conf.* at 11:17-21; *see*
7 *also June 28 Order* at 6, 34.) Accordingly, the TRA should require BellSouth to
8 provide the state-specific data this Authority has ordered. Only then will the TRA
9 and CLECs be able to evaluate whether BellSouth is complying with its
10 obligations under the Act.

11 **Q. ARE THERE OTHER IMPORTANT DISTINCTIONS BETWEEN THE**
12 **TENNESSEE ORDER AND GEORGIA SQM?**

13 A. Yes. The performance benchmarks established by the TRA and the Georgia
14 Commission are different. Performance benchmarks are objective standards set
15 by a state’s regulatory body that reflect the level of performance an ILEC must
16 achieve to ensure that its competitors have a meaningful opportunity to compete.
17 When the FCC considers whether an ILEC is providing nondiscriminatory access
18 to local services it will carefully review the ILECs’ performance based upon
19 performance benchmarks established by the state.⁷

⁷ See Memorandum Opinion and Order, *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a SouthWestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLata Services in Texas*, 15 FCC Rcd. 18,354 ¶¶ 55-56 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) (“*SWBT Texas Order*”) (emphasis added).)

1 **Q. HOW DO THE PERFORMANCE BENCHMARKS VARY BETWEEN**
2 **TENNESSEE ORDER AND GEORGIA SQM?**

3 A. On the whole, the performance benchmarks the TRA has ordered are more
4 stringent than those set forth in the Georgia SQM.

5 **Q. HOW MANY MEASURES HAVE MORE STRINGENT BENCHMARKS**
6 **IN TENNESSEE THAN IN GEORGIA?**

7 A. Once the TRA's Order is implemented fully, a significant number of Tennessee
8 measures⁸ will have benchmark thresholds that are higher than that required in
9 Georgia. The effect of these benchmark differences can impact significantly the
10 TRA's Section 271 evaluation.

11 **Q. HOW CAN THE DIFFERING BENCHMARKS IMPACT THE TRA'S**
12 **SECTION 271 DETERMINATION?**

13 A. To illustrate the impact of the benchmark differences between the two states,
14 consider the difference in the Reject Interval measure. In Georgia, the benchmark
15 for a partially mechanized order⁹ is 85% within 10 hours. In Tennessee, the
16 benchmark is 95% in 5 hours. (*See June 28 Order*, Ex. A at 36.) Accordingly,
17 performance that would be acceptable in Georgia would be deficient in
18 Tennessee. This measure is critical to CLECs' ability to compete because CLECs
19 cannot receive a due date from BellSouth until it submits an error-free LSR.
20 When BellSouth fails to issue rejections promptly, CLECs cannot correct the
21 problem, provisioning is delayed, and customers do not receive service on the due
22 date. Customers associate these delays with the CLEC and the CLEC-customer

⁸ The measures include: % Flow-through Service Requests – Summary; % Flow-through Service Requests – Detail; Reject Interval; FOC Timeliness; Completions/Attempts Without Notice or Less Than 24 Hours Notice; Coordinated Customer Conversion Interval; Average Answer Time - Repair Center; Usage Data Delivery Completeness; Usage Data Delivery Timeliness; Mean Time to Deliver Usage; Average Database Update Interval; Collocation Average Response Time; and Collocation Average Arrangement Time Collocation Percent Due Date Missed.

⁹ Unlike manual orders that are submitted to BellSouth via facsimile, partially mechanized orders are submitted electronically by CLECs to BellSouth, but fall out for manual processing for some reason.

1 relationship is negatively impacted.

2

3 Prior to any Section 271 determination, the TRA should be able to assure itself
4 that BellSouth's performance meets the standards the TRA established. As the
5 TRA stated in its Order, "[t]he benchmarks for the performance measurements . . .
6 represent levels of service that BellSouth *must* achieve in order to meet the
7 requirement of nondiscriminatory access." *Id.* at 41 (emphasis added).

8 **Q. ARE THERE OTHER REASONS WHY THE TRA SHOULD NOT BASE**
9 **ITS SECTION 271 DECISION ON PERFORMANCE MEASURES DATA**
10 **GENERATED UNDER THE GEORGIA SQM?**

11 A. Yes. The Tennessee Order includes more appropriate disaggregation (more
12 submetrics) than the Georgia SQM.

13 **Q. WHAT IS DISAGGREGATION?**

14 A. Disaggregation is the process of breaking down performance data into sufficiently
15 specific categories or dimensions so that like-to-like comparisons can be made.
16 For example, BellSouth's retail offerings contain a number of varying products.
17 In order to compare BellSouth's performance for its own retail customers to its
18 performance for CLECs, it is necessary for UNE analog loop products to be
19 compared separately with BellSouth's retail Plain Old Telephone Service
20 ("POTS") product.

21 **Q. IS THE DISAGGREGATION ORDERED BY THE TRA MORE**
22 **EXTENSIVE THAN THAT REQUIRED IN GEORGIA?**

23 A. Yes. The TRA has stated that its Order includes 900 to 1,272 submetrics and that
24 the Georgia plan includes approximately 555 to 766 submetrics. (*June 28 Order*
25 *at 34.*) The additional disaggregation in Tennessee affects over twenty measures.
26 Accordingly, the Tennessee Order will permit the TRA to make more like-to-like
27 comparisons than the Georgia SQM currently permits. As the Authority

1 recognized, this ability is important because it prevents poor performance in one
2 area (such as DS1) from being obscured by being combined with dissimilar
3 performance data. (*See id.* at 42 (stating the disaggregation levels adopted by the
4 TRA are “sufficiently specific to prevent the masking of discrimination”).)
5 Sufficient disaggregation is essential for an accurate comparison of results to
6 expected performance. This is true regardless of whether a retail analog or a
7 benchmark serves as the performance standard.

8 **Q. YOU MENTIONED THAT THE TRA’S PERFORMANCE**
9 **MEASUREMENTS PLAN INCLUDES ADDITIONAL MEASURES.**
10 **WHAT ADDITIONAL MEASURES HAS THE TRA IMPLEMENTED?**

11 A. In its Order, the TRA has added additional measures that are not included in the
12 Georgia SQM. These additional measures include:

- 13 • % Billing Errors Corrected in X days;
- 14 • % of Timely Loop Modification/De-conditioning on xDSL Loops;

15 **Q. WHY ARE THESE MEASURES IMPORTANT?**

16 A. The Percent Billing Errors Corrected In X Days is a critical measure. BellSouth
17 delays in providing adjustments to carrier bills or delays in correcting daily usage
18 feed errors can harm CLECs and CLEC customers in several ways. When
19 BellSouth fails to correct promptly errors in the daily usage file, CLECs are
20 obligated to either hold up charges or pass on incorrect charges to their customers.
21 CLECs must then expend their resources to adjust customer invoices. BellSouth’s
22 invoice accuracy measure does not capture whether errors are corrected within a
23 reasonable time. If the Authority were to accept the performance measures data
24 generated under the Georgia SQM, it would be unable to monitor and to evaluate
25 BellSouth’s performance in this key area pursuant to Tennessee-specific
26 standards.

1 The Percent Completion of Timely Loop Modification/Conditioning on xDSL
2 Loops is also an essential measure. Some loops require modification or
3 conditioning before they can be used to provide a customer with xDSL service.
4 This metric measures BellSouth's timeliness in making the needed modifications
5 or performing the necessary deconditioning. Since xDSL is a growing area of
6 service for CLECs and BellSouth, it is important that BellSouth modify and
7 condition loops in a timely manner.

8 **Q. CAN THE TRA PROPERLY GRANT SECTION 271 AUTHORITY**
9 **BASED ON PERFORMANCE DATA COLLECTED PURSUANT TO**
10 **GEORGIA'S SQM?**

11 A. No. Any determination made without data that is consistent with the performance
12 standards the TRA has ordered would be inappropriate because it is those
13 standards, not the standards adopted by the Georgia Commission, by which
14 BellSouth's performance will be judged going forward. Consequently, in order
15 for the TRA to make a credible determination on BellSouth's performance, such
16 determination must be made based upon performance standards adopted by this
17 Authority. Tennessee-specific performance standards and Tennessee-specific
18 data are necessary to make a Section 271 determination. The TRA should not be
19 misled into believing that the data BellSouth has provided to date based on the
20 Georgia SQM is sufficient to make a determination regarding BellSouth's request
21 for Section 271 relief.

22 **Q. WE HAVE DISCUSSED THE DIFFERENCES BETWEEN THE**
23 **TENNESSEE ORDER AND THE GEORGIA SQM. ARE THERE OTHER**
24 **REASONS WHY THE TRA SHOULD NOT EVALUATE BELL SOUTH'S**
25 **SECTION 271 COMPLIANCE BASED ON THE GEORGIA SQM?**

26 A. Yes. BellSouth has made unilateral modifications to the measures ordered by the
27 Georgia Commission.

1 **Q. WHY DO THESE MODIFICATIONS MATTER?**

2 A. As a result of these unauthorized modifications to measures, BellSouth has not
3 complied with the Georgia Commission's January 12 Order. The modifications
4 BellSouth has unilaterally implemented are important because they may allow
5 BellSouth to hide performance deficiencies.

6 **Q. DID THE GEORGIA COMMISSION ADOPT SEVERAL MEASURES**
7 **FROM BELL SOUTH'S MAY 2000 SQM?**

8 A. Yes, the Georgia Commission's January 12 Order adopted several measures from
9 BellSouth's May 2000 SQM. (*See Jan. 12 Order* at 3-6.) A review of the most
10 recent BellSouth SQM filed with the Georgia Commission however, reveals that
11 BellSouth has changed some of those measures. These modifications have the
12 potential to hide significant deficiencies in BellSouth's performance.

13 **Q. HOW HAS BELL SOUTH MODIFIED THE MAY 2000 SQM MEASURES**
14 **THE GEORGIA COMMISSION ORDERED IT TO REPORT?**

15 A. One key area in which BellSouth has modified the May 2000 SQM measures is
16 that it now excludes certain data from the measures calculations. Reported
17 performance measures data must present an accurate picture of BellSouth's
18 performance. When data is excluded from measures, or when particular events
19 are not monitored at all, the measures do not reflect BellSouth's true performance
20 and do not allow for adequate evaluation of BellSouth's performance. Excluding
21 data is likely to hide deficiencies. AT&T witness K.C. Timmons discusses the
22 impact of these exclusions on the integrity of BellSouth's data integrity in his
23 testimony also filed today.

1 **Q. DID THE GEORGIA COMMISSION APPROVE THE MODIFICATIONS**
2 **MADE BY BELL SOUTH?**

3 A. No, BellSouth unilaterally decided to exclude certain data. The excluded data
4 will not be available to CLECs or the Georgia Commission and will not be
5 available to the TRA.

6 **Q. PLEASE GIVE AN EXAMPLE OF AN UNAUTHORIZED EXCLUSION**
7 **BELL SOUTH HAS APPLIED TO ITS GEORGIA SQM.**

8 A. BellSouth has added additional exclusions to the Jeopardy Notice Interval
9 measure. A jeopardy notice advises the CLEC that an order is in jeopardy. The
10 CLEC can then advise its customer that the order will be delayed. BellSouth now
11 excludes non-dispatch orders from the Jeopardy Notice Interval. Thus, BellSouth
12 does not report the jeopardy notice interval for any orders for which it does not
13 require a technician to visit the customer's premises. These non-dispatch orders
14 were not excluded in the May 2000 SQM adopted by the Georgia Commission.

15 **Q. PLEASE EXPLAIN WHY THIS MEASURE IS IMPORTANT.**

16 A. This measure is important because, regardless of whether a BellSouth technician
17 is required to go to the customer's premises, CLEC customers need timely notice
18 that their service will be delayed. Moreover, BellSouth has stated that, if an order
19 is designated as nondispatch, and it is determined there is a facility delay, the
20 order will be given a dispatch code. Even under BellSouth's rules, however, this
21 manual change could be overlooked and result in the exclusion of data that should
22 be reported. BellSouth's unilateral choice to specify non-dispatch as an exclusion
23 can deny CLECs, commissions, and consumers an accurate picture of BellSouth's
24 performance.

25 **Q. ARE THERE OTHER EXCLUSIONS?**

26 A. Yes. BellSouth unilaterally decided to modify its May 2000 SQM to exclude
27 rural orders from the Held Order Interval measures. Thus, BellSouth's

1 performance measures reporting does not reveal whether customers in rural areas
2 are receiving slower service due to their geographic location. There is no
3 justification for consumers in rural areas to receive inferior service. These rural
4 orders were not excluded in the May 2000 SQM adopted by the Georgia
5 Commission.

6 **Q. HAS BELL SOUTH MADE ANY OTHER MODIFICATIONS?**

7 A. Yes. BellSouth also excludes nonmechanized orders from the FOC and Reject
8 Response Completeness measure. This measure addresses how often BellSouth
9 returns either a FOC or a reject notice – the only appropriate responses – to a
10 CLEC order. Without a FOC, CLECs are unable to provide their customers with
11 a forecast of when service will be provisioned. This leads to customer frustration
12 and potential cancelled orders.

13 **Q. CAN THE TRA GRANT BELL SOUTH SECTION 271 AUTHORITY**
14 **BASED UPON PERFORMANCE DATA THAT IS DEFINED BY**
15 **BELL SOUTH'S GEORGIA SQM?**

16 A. No. The bottom line is that BellSouth is seeking Section 271 relief and asking the
17 TRA to evaluate its performance on data that is not compliant with the Georgia
18 Order or with the TRA's Order. The TRA should reject BellSouth's request.
19 BellSouth has not reported its performance in accordance with the Georgia
20 Commission's Order. In addition, the Georgia and Tennessee performance plans
21 and performance standards are significantly different. BellSouth should be denied
22 Section 271 authority until it provides the TRA appropriate information, including
23 CLEC-specific results, to judge whether BellSouth is in compliance with the
24 performance measures and standards ordered by the TRA.

1 **Q. ARE THERE ANY OTHER FACTORS RELATED TO PERFORMANCE**
2 **MEASURES THE TRA SHOULD CONSIDER WHEN MAKING ITS**
3 **SECTION 271 EVALUATION?**

4 A. Yes. The presence of a fully functioning, validated enforcement plan is critical to
5 ensure CLECs receive the level of service from BellSouth that will enable them to
6 compete successfully in Tennessee’s local exchange market. CLECs believe that
7 self-executing remedies are needed to enforce the Section 271 market opening
8 provisions of the Act as well as to prevent Section 271 backsliding. As this
9 Authority stated,

10 [w]ithout a system of enforcement mechanisms, this agency cannot
11 fulfill its obligation under both state and federal law to ensure that
12 CLECs are able to compete in Tennessee. Performance
13 measurements, without enforcement mechanisms to provide
14 explicit, concrete consequences for unsatisfactory performance, are
15 virtually meaningless.

16
17 *June 28 Order at 46.*

18 **Q. HOW CAN AN EFFECTIVE REMEDY PLAN IMPLEMENTED BEFORE**
19 **SECTION 271 APPROVAL IS GRANTED PREVENT BACKSLIDING**
20 **ONCE SECTION 271 RELIEF IS OBTAINED?**

21 A. Built-in enforcement mechanisms “provide the Authority with a tool to assure that
22 BellSouth [offers] access to its network in a competitively neutral matter.” (*June*
23 28 Order at 44.) The remedy plan established by the TRA requires BellSouth to
24 compensate CLECs for competitive harm caused when BellSouth’s performance
25 does not adhere to the benchmarks or retail analogs the TRA established. These
26 “penalties” are designed to provide the incentives necessary for BellSouth to
27 prevent or correct “backsliding” performance. Accordingly, a functioning
28 effective remedy plan that is in place prior to Section 271 approval will help to
29 ensure that CLECs continue to receive the level of service from BellSouth that
30 will enable them to successfully compete in this state after Section 271 authority
31 is granted.

1 **Q. HAS THE TRA ORDERED A REMEDY PLAN?**

2 A. Yes, the TRA has ordered a plan that CLECs believe will be more effective in
3 promoting competition than the Georgia remedy plan.

4 **Q. HAS THE REMEDY PLAN BEEN IMPLEMENTED?**

5 A. No. Before making any Section 271 determination, the TRA should ensure the
6 remedy plan it ordered is implemented fully and that the TRA has collected and
7 audited the data to ensure the remedy plan is working.

8 **Q. BELLSOUTH HAS PROPOSED THAT THE TRA RELY ON THE**
9 **GEORGIA REMEDY PLAN. SHOULD THE TRA FOLLOW**
10 **BELLSOUTH'S SUGGESTION?**

11 A. No. The TRA has ordered the remedy plan it believes is necessary to ensure that
12 BellSouth provides CLECs nondiscriminatory access to its network in this state.
13 The TRA considered carefully what was required to monitor BellSouth's on-
14 going performance in this state and what remedies would be necessary to motivate
15 BellSouth to achieve the performance levels mandated by the TRA. The Georgia
16 remedy plan is insufficient for these purposes because it does not reflect what the
17 TRA ordered and because it is flawed. The Georgia remedy plan permits non-
18 compliant performance to be masked and not to be subject to remedies. The
19 Georgia remedy plan, for example, relies upon an inappropriate remedy
20 calculation methodology that reduces incentive for BellSouth to comply with
21 designated performance standards. In addition, the Georgia remedy plan does not
22 include many key performance measures. This inadequacy hinders the ability to
23 detect discriminatory performance by BellSouth. Furthermore, the level of
24 disaggregation in the Georgia remedy plan is insufficient. Accordingly, the
25 Georgia remedy plan is incapable of enforcing BellSouth's level of performance
26 as required by the TRA.

1 **Q. IS IT APPROPRIATE AT THIS TIME FOR THE AUTHORITY TO**
2 **EVALUATE BELL SOUTH'S COMPLIANCE WITH SECTION 271?**

3 A. No. As my testimony demonstrates, the TRA has established the performance
4 measures, performance standards and enforcement mechanisms necessary to
5 promote effective competition in Tennessee. Until BellSouth complies with the
6 TRA's Order, the Authority does not possess the information it has deemed
7 necessary to measure accurately BellSouth's performance in this state. BellSouth
8 cannot rely upon the Georgia SQM as a basis to demonstrate that it is satisfying
9 the nondiscriminatory requirements of the Act. The Georgia SQM and remedy
10 plan are inadequate substitutes for what the TRA has ordered. Once BellSouth
11 implements the Tennessee remedy plan and provides performance measures
12 reports and performance data generated under a Tennessee-specific SQM, the
13 TRA will be able to evaluate more fully the level of performance BellSouth
14 provides in this state.

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A. Yes.



BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guyhicks@bellsouth.com

July 3, 2002

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

VIA US MAIL AND FACSIMILE 615/741-5015

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Docket to Establish Generic Performance Measurements, Benchmarks
and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*
Docket No. 01-00193

Ladies and Gentlemen:

BellSouth provides this letter in reference to the Order issued on June 28, 2002 in the above-referenced docket. In light of several issues relating to the modifications to the original Order, which were memorialized in the June 28 Order, BellSouth anticipates that it will seek reconsideration of the June 28 Order within the 15-day period permitted under the statute.

The June 28 Order includes required performance measurements and implementation deadlines. As discussed more fully below, BellSouth intends to comply with the Order, to the extent possible, pending reconsideration of the Order. With respect to three of the performance measurements established in the Order, BellSouth believes that it will be unable to implement those measurements in the ten-day timeframe required pursuant to the Order. Accordingly, BellSouth intends to seek a stay of the Order to the extent necessary to provide BellSouth sufficient time to implement these measurements, pending review of the Order. The time to seek a stay of the Order under Tennessee law would ordinarily expire after seven days, requiring BellSouth to file a petition for stay by Friday, July 5. BellSouth has been informed, however, that the Authority will not be accepting filings during the week ending on July 5th due to the closing of various state offices and the furlough of government employees related to the government shutdown. In light of this situation, BellSouth is obviously unable to make any filing within the seven-day period provided under the statute. BellSouth intends to file its petition for stay immediately after the Authority begins accepting filings again.

453468

Docket 97-00309
Exhibit CLB-1

Tennessee Regulatory Authority
 July 3, 2002
 Page 2

In the Amended Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms, ("Amended Order") docket No 01-00193, the Authority ruled that each ordered measurement be adopted in timeframes of, respectively, 10 days, 90 days or 6 months, based upon defined criteria. Specifically, the Authority identified the measurements that should be implemented within 10 days of the Final Order as: "measures currently in place in Tennessee or other states". (Order, pp 38-39).

Exhibit A to the Amended Order lists twenty (20) measures for which implementation is required within ten days of the date of the Order. These measures include:

1. OSS-1 Average Response Time & Response Interval (Pre-Ordering/Ordering)
2. OSS-4 Response Interval (M&R)
3. PO-1 Loop Makeup -Response Time / Manual
4. PO-2 Loop Makeup - Response Time - Electronic
5. O-1 Acknowledgement Message Timeliness
6. O-2 Acknowledgement Message Completeness
7. B-3 Percent Daily Usage Feed Errors Corrected in X Business Days
8. B-3A Percent Billing Errors Corrected in X Days
9. M&R-6 Average Answer Time - Repair Centers
10. C-1 Collocation Average Response Time
11. C-2 Collocation Average Arrangement Time
12. C-3 Collocation Percent of Due dates Missed
13. OS/DA - 1 Speed to Answer Performance/ Average Speed to Answer - Toll
14. OS/DA --2 Speed to Answer Performance/ Percent Answered within "X" Seconds
15. D-3 Percent NXXs and LRNs Loaded by the LERG Effective Date
16. E-1 E911 Timeliness
17. E-2 E911 Accuracy
18. E-3 E911 Mean Interval
19. TGP-1 Trunk Group Performance - Aggregate
20. TGP-2 Trunk Group Performance - CLEC Specific

Tennessee Regulatory Authority

July 3, 2002

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BellSouth has reviewed these measurements and has determined that eleven can be implemented within the ten-day period in precisely the manner required by the Order.¹ Six more measures can be implemented in this timeframe if very minor format and reposting variations from the Order are allowed temporarily. Three measures cannot be implemented in the 10-day timeframe. However, these 3 measures require substantial changes and should, therefore, not be in the 10-day implementation category.

As to the six measures that can be implemented with slight variations in format and reporting, four require state specific reporting, and removal of the regional reporting results. These include the measures, (1) PO-1 Loop Makeup – Response Time – Manual, (2) PO-2 Loop Makeup – Response Time – Electronic, (3) TGP-1 Trunk Group Performance – Aggregate and (4) TGP-2 Trunk Group Performance – CLEC Specific. Based on the current structure of the reports for these measures, BellSouth can provide the state specific data, but cannot remove the regional data within the ten-day implementation process. In order to remove the regional data, BellSouth will have to write scripts used to generate the PMAP reports as well as the web display design related to these reports.

Also, BellSouth currently generates four reports for the measures: (1) OS-1 Speed to Answer Performance/Average Speed to Answer – Toll, (2) OS-2 Speed to Answer Performance / Percent Answered within "X" Seconds – Toll, (3) DA-1 Speed to Answer Performance /Average Speed to Answer – Directory Assistance (DA), and (4) Speed to Answer Performance/ Percent Answered within "X" Seconds – Directory Assistance) The Order requires that these be collapsed into two (2) measures: (1) OS/DA-1 Speed to Answer Performance/Average Speed to Answer – Toll and (2) OS/DA-2 Speed to Answer Performance/ Percent Answered within "X" Seconds. BellSouth can report these measures separately, as they are currently reported, within the ten-day period.

Thus, with the above qualifications, the following measures can be implemented in the allotted time:

¹ As stated in its Motion for Reconsideration, BellSouth cannot begin to report a measure in the middle of a month. Thus, in order to comply with the order, BellSouth has initiated each of these measures as of July 1, 2002. This means that, for these measures, actual compliance has been accomplished in one business day (from Friday, June 28, when the Amended Order was issued, until Monday, July 1).

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1. OSS-1 Average Response Time & Response Interval (Pre-Ordering/Ordering)
2. OSS-4 Response Interval (M&R)
3. PO-1 Loop Makeup - Response Time / Manual
4. PO-2 Loop Makeup - Response Time - Electronic
5. O-1 Acknowledgement Message Timeliness
6. O-2 Acknowledgement Message Completeness
7. C-1 Collocation Average Response Time
8. C-2 Collocation Average Arrangement Time
9. C-3 Collocation Percent of Due dates Missed
10. OS/DA - 1 Speed to Answer Performance/ Average Speed to Answer - Toll
11. OS/DA -2 Speed to Answer Performance/ Percent Answered within "X" Seconds
12. D-3 Percent NXXs and LRNs Loaded by the LERG Effective Date
13. E-1 E911 Timeliness
14. E-2 E911 Accuracy
15. E-3 E911 Mean Interval
16. TGP-1 Trunk Group Performance - Aggregate
17. TGP-2 Trunk Group Performance - CLEC Specific

The three measures that BellSouth cannot implement within the ten day period are: (1) B-3, Percent Daily Usage Feed Errors Corrected in X Days; (2) B-3A, Percent Billing errors Corrected in X Days; and (3) M&R-6, Average Answer Time - Repair Centers. With respect to the first two measures, the Authority adopted BellSouth's proposed substitute measures for the measures originally ordered, but changed the measures from diagnostic to parity with retail. Since these measures, as currently developed and designed, are produced as diagnostic measures, changing them to produce parity comparisons introduces numerous tasks that must be completed prior to implementation.

In its Motion for Reconsideration, BellSouth noted the numerous steps that are required each time a change is made to an existing measurement. (Motion, pp. 21 - 22). In particular, creating a parity basis for comparison requires statistical testing to generate performance results and penalty calculations. Also, the coding necessary to introduce these changes would require a detailed description of the output requirements, reconciliation between the design and coding requirements,

Tennessee Regulatory Authority

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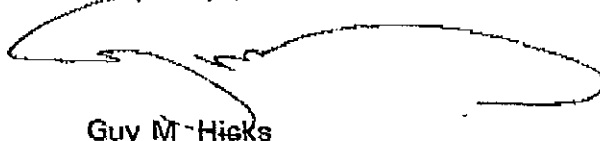
code development/testing, application code production, and output and presentation development. These steps cannot be completed within ten days.

Moreover, beyond the issues identified above, BellSouth does not have a comparable process to serve as a retail analog for the measure B-3A Percent Billing errors Corrected in X Day. Since a retail analog does not exist, a suitable standard and benchmark would have to be established prior to implementation of this measure. This will also delay implementation. For these reasons, implementation cannot be accomplished within the 10-day period.

As to the third measure identified above, M&R-6, Average Answer Time - Repair Centers, this metric is currently reported based on a parity comparison. The average answer time for CLEC repair centers is compared to the average answer time for BellSouth retail repair centers. Thus, the data provided to generate these reports are structured and fed to PMAP as an average answer time. The Authority ordered that reporting be done based on the percent of calls answered in a particular interval. To accomplish this, the structure of the data provided to create the reports will have to be changed. Interval buckets will then have to be established in PMAP to hold the data, which will later be compared to the associated benchmark established by the Authority. Thus, this measurement also cannot be implemented within 10 days.

Finally, once again, the Authority's stated basis for establishing the 10-day implementation requirement, is that these "[m]easures [are] currently in place in Tennessee or other states". (*Amended Order*, pp 38-39). Under the application of this standard, these three measures should not be included on the list to be implemented in ten days, since, as noted above, each will require substantial modification.

Very truly yours,

A handwritten signature in black ink, appearing to read "Guy M. Hicks", with a long, sweeping horizontal stroke extending to the right.

Guy M. Hicks

GMH:ch

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF DAVID A. COON
BEFORE THE TENNESSEE REGULATORY AUTHORITY
DOCKET NO. 01-00193
JULY 16, 2001

I. INTRODUCTION AND ORGANIZATION OF TESTIMONY

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

A. My name is David A. Coon. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am Director - Interconnection Services for BellSouth Telecommunications, Inc. ("BellSouth") and am responsible for managing certain aspects of BellSouth's performance measurements.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. My career at BellSouth spans over 20 years and includes positions in Network, Regulatory, Finance, Corporate Planning, Small Business Services and Interconnection Operations. I received a Bachelors Degree in Civil Engineering from Ohio University and a Masters Degree in Engineering Administration from George Washington University.

Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR TESTIMONY

1

2 **II. PURPOSE AND DESIRED OUTCOME OF THIS DOCKET**

3

4 Q. WHAT IS THE PURPOSE OF THIS DOCKET?

5

6 A. The Tennessee Regulatory Authority ("TRA" or "Authority") established this docket
7 for the purpose of determining the performance measurements and associated
8 enforcement mechanisms necessary to ensure that BellSouth offers Tennessee
9 CLECs interconnection and access to network elements on a nondiscriminatory
10 basis, pursuant to the requirements of the Telecommunications Act of 1996 (1996
11 Act). Performance measurements are designed to capture data associated with
12 the level of service provided to CLECs. An enforcement mechanism is intended as
13 an incentive for Incumbent Local Exchange Carriers ("ILECs") such as BellSouth to
14 avoid "backsliding" after interLATA authority is granted.

15

16 Q. WHAT DOES BELL SOUTH REQUEST OF THE AUTHORITY IN THIS
17 PROCEEDING?

18

19 A. BellSouth requests that the Authority adopt the performance measurements and
20 enforcement mechanism proposed by BellSouth. The 2001 SQM, attached to my
21 testimony as Exhibit DAC-1, is a comprehensive compilation and explanation of all
22 performance measurements proposed by BellSouth. As I mentioned above, the
23 Authority has previously adopted a plan that was based in large part on the 1999
24 version of the SQM proposed by BellSouth. In the intervening two years, as
25 BellSouth has learned more from the FCC and its decisions on interLATA

BEFORE THE TENNESSEE REGULATORY AUTHORITY

EXCERPT OF DIRECTORS' CONFERENCE

Tuesday, June 18, 2002

Reported By:

Susan D. Delac, RPR, CCR

	DOCKET	DESCRIPTION	DISPOSITION
1			
2			
	01-00193	Tennessee Regulatory	Greer Motions
3		Authority	2-1
		Generic docket to	(Kyle
4		establish performance	dissenting)
		measurements, benchmarks	
5		and enforcement	
		mechanisms for BellSouth	
6		Telecommunications, Inc.	
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1 (The aforementioned Directors'
2 Conference came on to be heard on Tuesday, June 18,
3 2002, beginning at approximately 10:00 a.m., before
4 Chairman Sara Kyle, Director Lynn Greer, and Director
5 Melvin Malone. The following is an excerpt of said
6 proceedings that were had, to-wit:)

7
8 MR. WADDELL: 01-00193, Tennessee
9 Regulatory Authority, generic docket to establish
10 performance measurements, benchmarks and enforcement
11 mechanisms for BellSouth Telecommunications, Inc.

12 DIRECTOR GREER: I have a motion that
13 we will basically take in two parts. And I want to
14 take up the legal aspect of my motion first, and so
15 I'll begin with that part before I do take up the
16 technical end of it.

17 I would like to focus first on the
18 legal aspects of BellSouth's motion for consideration.
19 Turning to BellSouth's contention that the Authority
20 lacks jurisdiction to impose enforcement mechanisms,
21 the motion for reconsideration presents no new facts or
22 arguments with one exception.

23 The one new argument is that the
24 enforcement mechanisms in this case violate Article 6
25 Section 14 of the Tennessee Constitution which also is

1 known as the \$50 Fines Clause.

2 It is questionable that the \$50 Fines
3 Clause even applies to monetary sanctions imposed by
4 administrative agencies.

5 Furthermore, the \$50 Fines Clause does
6 not apply to monetary sanctions that are primarily
7 remedial. The enforcement mechanisms adopted by the
8 Authority are intended to be remedial. The Tier I
9 enforcement mechanisms which are paid to the CLECs
10 affected by BellSouth's failure to comply with the
11 performance measures adopted by the Authority are
12 intended to provide some manner of compensation to the
13 CLECs for BellSouth's failure to conform to the
14 performance measurements.

15 Our purpose in adopting the Tier II
16 enforcement mechanisms which are payable to the
17 Authority when BellSouth fails to correct a Tier I
18 violation for three consecutive months is to prevent
19 BellSouth from retaining ill-gotten gains resulting
20 from its continued failure to conform to the
21 performance measures and to ensure compliance with the
22 order setting performance measurements, benchmarks, and
23 enforcement mechanisms.

24 The self-effectuating two-tiered
25 structure of the enforcement mechanisms is intended to

1 be prospectively coercive by allowing BellSouth two
2 opportunities to correct the problem before Tier II
3 enforcement mechanisms are imposed.

4 Accordingly, I move that the portion
5 of BellSouth's motion for reconsideration that
6 challenges the Authority's jurisdiction to impose the
7 performance measures, benchmarks, and enforcement
8 mechanisms adopted on April 16 be denied.

9 CHAIRMAN KYLE: Jurisdiction, we do
10 have jurisdiction. I agree.

11 DIRECTOR MALONE: I agree as well.

12 DIRECTOR GREER: I would now like to
13 turn to that portion of BellSouth's motion for
14 reconsideration that contends that the Authority
15 violated the Sunshine Law during deliberations in this
16 docket. BellSouth's argument focuses primarily on the
17 document containing the performance measures,
18 benchmarks, and enforcement mechanisms that was passed
19 out to the Directors during the April 16th Authority
20 conference. This document was summarized orally during
21 the motion that preceded the deliberations.

22 The basic principle underlying the
23 Sunshine Law is that public knowledge of the manner in
24 which governmental decisions are made is an essential
25 part of the democratic process. It is the policy of

1 this state that the formation of public policy and
2 decisions is public business and shall not be conducted
3 in secret.

4 First, BellSouth argues that the
5 Directors did not take sufficient time to consider the
6 document containing performance measurements,
7 benchmarks, and enforcement mechanisms before they made
8 their decision. From this assertion, BellSouth implies
9 that the Directors must have colluded prior to the
10 deliberations.

11 I want to state for the record that
12 this implication lacks any factual basis. There was no
13 collusion prior to, during, or after deliberations.
14 The Directors prepared themselves individually prior to
15 deliberations, which is a practice authorized by law.
16 Furthermore, the Sunshine Law does not specify a
17 particular length of time for consideration of
18 documents distributed during deliberations.

19 Next, BellSouth argues that the oral
20 motion made during the deliberations was inconsistent
21 with the document containing the performance
22 measurements, benchmarks, and enforcement mechanisms
23 adopted by the Directors.

24 Specifically, BellSouth claims that
25 the oral motion proposed that "BellSouth's recommended

1 categories and remedy amounts be adopted" but the
2 document containing the performance measurements,
3 benchmarks, and enforcement mechanisms adopted by the
4 Authority did not adopt BellSouth's proposed
5 enforcement mechanisms.

6 This is incorrect. The categories
7 used in the document containing the performance
8 measurements, benchmarks, and enforcement mechanisms
9 adopted by the Authority are the same as those used in
10 BellSouth's SEEM plan with one addition, database
11 updates. The dollar amounts proposed in the fee
12 schedule to BellSouth's SEEM plan are the same as those
13 adopted by the Authority, but they are applied
14 differently only because the dollar amounts adopted by
15 the Authority apply to more levels of disaggregation
16 than the SEEM plan.

17 BellSouth also claims that where the
18 oral motion proposed to impose Tier II enforcement
19 mechanisms upon BellSouth's "systematic failure to
20 provide adequate service to the CLEC community," the
21 document adopted by the Directors applied Tier II
22 enforcement mechanisms to single violations of the
23 enforcement measurements.

24 This is incorrect. The Tier II
25 enforcement mechanisms apply only after BellSouth

1 violates a performance measurement for three
2 consecutive months. That is, a systematic failure to
3 provide adequate service.

4 BellSouth also argues that the
5 document containing performance measurements,
6 benchmarks, enforcement mechanisms adopted by the
7 Directors on April 16 and attached to the official
8 transcript was different from the document that was
9 attached as Exhibit A to the order setting performance
10 measurements, benchmarks, and enforcement mechanisms.
11 Due to a clerical error, the wrong document was
12 attached to the order. But that error was cured by an
13 erratum issued by the Executive Secretary on June 10th,
14 2002. The erratum renders BellSouth's argument moot.
15 In reaching this conclusion, I have considered
16 BellSouth's comments on the erratum filed on Friday,
17 June 14.

18 Accordingly, I move that the portion
19 of BellSouth's motion for consideration that claims the
20 Authority violated the Sunshine Law be denied.

21 CHAIRMAN KYLE: I can assure you and
22 assure this body that I did not meet with or discuss
23 this case with the other two Directors, or any other
24 case with the other two Directors. I did not violate
25 the Sunshine Law.

1 DIRECTOR MALONE: I will agree with
2 Director Greer and second the motion with respect to
3 the alleged Sunshine Law violation.

4 And, also, for purposes of the record,
5 state that as is my custom, I individually prepared for
6 the deliberations and did not discuss my deliberations
7 with either Director.

8 DIRECTOR GREER: Thank you. Can we
9 take about a two-minute break before we go into the
10 technical considerations?

11 CHAIRMAN KYLE: Sure. We're on break
12 for five minutes at least. We'll see where we are in
13 five minutes.

14 (Recess taken from 10:50 to
15 11:15 a.m.)

16 DIRECTOR GREER: I'm ready to take up
17 the second part of my motion. This is similar to other
18 motions as it relates to this docket. This is not
19 necessarily a brief motion but, quite frankly, it's a
20 whole lot briefer than the last one.

21 But at any point if either of the
22 Directors want to stop and say I want to vote on that
23 now, feel free to do so. But I intend to make the
24 whole motion and then we can come back and take up the
25 individual items. I think it's just as easy to do

1 that.

2 I find that the Authority adopted a
3 comprehensive set of measures that will capture
4 relevant data to accurately measure the level of
5 service BellSouth provides to CLECs in Tennessee.
6 BellSouth contends that the plan adopted by the
7 Authority is duplicative and punitive. It cites the
8 Georgia SEEM plan in comparison as justification of
9 this claim. There are a total of 76 metrics in the
10 Georgia plan as opposed to 78 in the Tennessee plan.
11 The levels of disaggregation varies between the two
12 plans and depending on the manner in which the products
13 are counted equates to roughly 555 to 766 submetrics in
14 Georgia and roughly 900 to 1272 in Tennessee.

15 BellSouth also cites the 74 Tier I and
16 98 Tier II measures to which penalties are attached.
17 Although these numbers may be correct, I fail to see
18 the relevance for the Authority's purposes. By the
19 nature of the enforcement plan ordered by the
20 Authority, BellSouth will trigger enforcement
21 mechanisms with a low performance as measured at the
22 same level of disaggregation as it reports for the
23 performance measure.

24 I am aware that Georgia's enforcement
25 plan allows BellSouth to reaggregate the reported

1 measures and compare those reaggregated numbers to an
2 aggregate benchmark or analog and then apply
3 enforcement mechanisms to the aggregated comparisons.
4 I respectfully do not agree with the Georgia plan's
5 approach.

6 I would note that BellSouth opposes
7 aggregating some but not all types of data over
8 consecutive units of time for the purpose of
9 calculating remedy amounts. As with the use of pooled
10 regional data to assess flow through performance, the
11 types of aggregation that BellSouth supports in this
12 docket in conjunction with the changes in BellSouth's
13 performance at a more granular level of aggregation
14 would unreasonably mask especially good or bad
15 wholesale performance. Likewise, if all states in
16 BellSouth's region adopted BellSouth's proposed
17 performance plan, BellSouth's proposed methods of
18 aggregation under that plan would also give BellSouth
19 the discretionary ability to mask positively or
20 negatively its state-specific exposure to enforcement
21 mechanisms.

22 In contrast and consistent with the
23 Authority's general concern over and treatment of cost
24 allocation for regulated multistate utilities, the
25 Authority's approach in its performance plan

1 appropriately assigns BellSouth's regulatory cost from
2 wholesale operations affected by the Authority's
3 performance plan to BellSouth's wholesale operations in
4 Tennessee.

5 I would also note that per an order on
6 reconsideration the Florida Public Service Commission
7 which is their Docket No. 000121-TP, adopted 800 Tier I
8 and 850 Tier II measures. Those numbers are also in
9 excess of the Georgia plan, but BellSouth has not
10 appealed the Florida decision. Accordingly, I
11 respectfully cannot agree with BellSouth's assertion
12 that the measurement plan adopted by this Authority is
13 punitive.

14 While I continue to support using the
15 measures that were previously adopted, I find that
16 certain modifications in the Authority's previously
17 adopted plan are necessary in order to achieve more
18 meaningful results.

19 For TN-OSS-2, I move to grant
20 BellSouth's request for reconsideration as follows:
21 Exclusions will include weekend maintenance; and the
22 system RoboTAG will be removed as a level of
23 disaggregation. I move to deny all other requests for
24 reconsideration of this metric.

25 I guess it would be easier to take

1 these one at a time.

2 DIRECTOR MALONE: Second.

3 CHAIRMAN KYLE: I'll hold my vote to
4 the end.

5 DIRECTOR GREER: For TN-0-1 and 0-2, I
6 move to grant BellSouth's request for reconsideration
7 of state-specific reporting and make these measures
8 regional. I move to deny BellSouth's request for
9 reconsideration of Tier I penalties, however.

10 DIRECTOR MALONE: Second.

11 CHAIRMAN KYLE: I'll hold my vote to
12 the end.

13 DIRECTOR GREER: I move to grant in
14 part BellSouth's motion for reconsideration of the
15 Product Level Disaggregation associated with ordering
16 measures TN-0-7. I move to require the following
17 levels, there's 31: Product level disaggregation.
18 Number 1, Resold residence POTS. Number 2, resold
19 business POTS. Number 3, resold design. Number 4,
20 resold PBX. Number 5, resold Centrex/Centrex-like.
21 Number 6, resold BRI ISDN. Number 7, resold PRI ISDN.
22 Number 8, resold DID trunks. Number 9, UNE platform.
23 Number 10, two wire analog design. Number 11, two wire
24 analog nondesign. Number 12, UNE digital loop less
25 than DS1. Number 13, UNE DS1. Number 14, UNE DS3 and

1 greater. Number 15, unbundled ISDN BRI. Number 16,
2 unbundled ISDN PRI. Number 17, unbundled ADSL.
3 Number 18, unbundled HDSL. Number 19, UCL short and
4 long. Number 20, LNP. Number 21, INP. Number 22,
5 other unbundled loops design. Number 23, other
6 unbundled loops nondesign. Number 24, unbundled
7 UDC/IDSL loop. Number 25, UNE switch port. Number 26,
8 local interoffice transport. Number 27, local
9 interconnection trunks. Number 28, line sharing/high
10 frequency spectrum UNE. Number 29, line splitting/high
11 frequency spectrum UNE. Number 30, enhanced extended
12 loops (new EELs). Number 31, special access to EELs
13 conversion.

14 DIRECTOR MALONE: Second.

15 CHAIRMAN KYLE: I'll hold my vote to
16 the end.

17 DIRECTOR GREER: For TN-0-8, I move to
18 grant in part BellSouth's request to change the levels
19 of disaggregation consistent with measure TN-0-7. The
20 Authority should deny BellSouth's request for
21 reconsideration of benchmark for partially mechanized
22 LSRs.

23 DIRECTOR MALONE: Second.

24 CHAIRMAN KYLE: Again, I'll wait till
25 the end to vote.

1 DIRECTOR GREER: For TN-0-9, I move to
2 grant in part BellSouth's request for disaggregation
3 levels consistent with TN-0-7 and TN-0-8, and to deny
4 BellSouth's request for reconsideration of benchmark
5 for partially mechanized and fully mechanized LSRs. I
6 move to deny BellSouth's motion on all other issues for
7 this measure.

8 DIRECTOR MALONE: Second.

9 CHAIRMAN KYLE: I'll hold my vote.

10 DIRECTOR GREER: For TN-0-11, I move
11 to grant BellSouth's motion for reconsideration of the
12 removal of totally mechanized as a level of
13 disaggregation as well as grant the motion for
14 reconsideration of disaggregation levels, consistent
15 with percent rejected service request.

16 DIRECTOR MALONE: Second.

17 CHAIRMAN KYLE: I'll hold my vote till
18 the end.

19 DIRECTOR GREER: For TN-0-12, I move
20 to deny BellSouth's motion to reconsider reporting
21 structure. I also move to eliminate from the benchmark
22 the provision regarding greater than 95 percent of
23 calls answered by center within 20 seconds.

24 DIRECTOR MALONE: Second.

25 CHAIRMAN KYLE: I'll wait till the end

1 to vote.

2 DIRECTOR GREER: For all provisioning
3 performing metric, I move that, Number 1, Tier 1 and
4 Tier II enforcement mechanisms be removed from both the
5 two wire xDSL loops and four wire xDSL loops product
6 categories.

7 Number 2, the Authority replace the
8 local interoffice trunks product category with local
9 interconnection trunks and local interoffice transport
10 product categories. Also, the Authority should adopt
11 parity and retail DS1 and DS3 interoffice as retail
12 analogs respectively.

13 Number 3, the retail analog for UNE
14 digital loops less than DS1 (dispatch in and dispatch
15 out) be changed to retail digital loops less than DS1.

16 Number 4, the retail analog for EELs
17 (dispatch) should be changed to retail DS1/DS3.

18 DIRECTOR MALONE: Second.

19 CHAIRMAN KYLE: I will hold my vote.

20 DIRECTOR GREER: I move that the
21 Authority clarify the order to indicate that Tier I
22 penalties apply to both TN-P-2 and TN-P-3 performance
23 metrics.

24 DIRECTOR MALONE: Second.

25 DIRECTOR GREER: For metrics TN-P-6

1 and TN-P-7, I move that the language for the benchmark
2 associated with these measures be clarified to reflect
3 retail analog only as opposed to the current dual
4 benchmark.

5 DIRECTOR MALONE: Second.

6 DIRECTOR GREER: I move to remove
7 product disaggregation categories other than those
8 comprised of UNE loops from performance metric TN-P-9.

9 DIRECTOR MALONE: Second.

10 DIRECTOR GREER: For metric
11 TN-P-21:LNP, I move to implement BellSouth's proposed
12 elimination of product disaggregation categories,
13 except for the product LNP.

14 DIRECTOR MALONE: Would you restate
15 that motion again, Director Greer.

16 DIRECTOR GREER: Yes. For metric
17 TN-P-21:LNP, I move to implement BellSouth's proposed
18 elimination of product disaggregation categories,
19 except for the product LNP.

20 DIRECTOR MALONE: Second.

21 CHAIRMAN KYLE: I'll hold my vote
22 again till the end.

23 DIRECTOR GREER: I move to adopt
24 BellSouth's proposed change of the product
25 disaggregation category interconnection trunks to

1 interconnection for billing performance measures.
2 Further, I move to adopt BellSouth's proposal that
3 parity should be set as the retail analog for all
4 affected billing metrics.

5 DIRECTOR MALONE: Second.

6 CHAIRMAN KYLE: I'll wait till the end
7 to vote.

8 DIRECTOR GREER: I move to adopt
9 BellSouth's proposed replacement metrics for TN-B-3
10 with the following modifications: One, Tier I and Tier
11 II enforcement mechanisms will apply to the replacement
12 metrics and, two, Tier I remedies will include CLEC
13 specific reporting.

14 DIRECTOR MALONE: Second.

15 CHAIRMAN KYLE: I'll hold my vote.

16 DIRECTOR GREER: I move that Tier I
17 and Tier II enforcement mechanisms be removed from the
18 metrics, TN-B-5, TN-B-6, TN-B-7. I also move that the
19 Authority adopt BellSouth's proposed language change to
20 remove the sentences in the definition provisions that
21 read "a parity measure is also provided showing
22 completeness of BellSouth messages processed and
23 transmitted via CMDS."

24 DIRECTOR MALONE: Second.

25 CHAIRMAN KYLE: I will wait till the

1 end to vote.

2 DIRECTOR GREER: I move that for each
3 affected maintenance and repair metric that the
4 Authority modify the associated product disaggregation
5 as follows: Remove dispatch from enhanced extended
6 loops (EELs) dispatch and delete special access to EELs
7 conversion, unbundled two wire xDSL loop, unbundled
8 four wire xDSL loop, and LNP to INP.

9 DIRECTOR MALONE: Second.

10 CHAIRMAN KYLE: No vote yet.

11 DIRECTOR GREER: For metric TN-M&R-1,
12 I move that LMOSD code 7 (test-okay) LMOS code 8
13 (okay-in), LMOS code 9 (okay-out), and WFA-NTF (no
14 trouble found) are not exclusions for this measurement,
15 thereby upholding the Authority's original decision.

16 DIRECTOR MALONE: Second.

17 CHAIRMAN KYLE: I'll hold my vote till
18 the end.

19 DIRECTOR GREER: For metric TN-M&R-5,
20 I move to change the benchmark to retail analog.

21 DIRECTOR MALONE: Second.

22 CHAIRMAN KYLE: I'll wait till the end
23 to vote.

24 DIRECTOR GREER: For measure TN-M&R-6,
25 I move to, Number 1, remove the product disaggregation

1 from this measure; and, 2, eliminate from the benchmark
2 the provision regarding greater than 95 percent of
3 calls answered by center within 20 seconds.

4 DIRECTOR MALONE: Second.

5 DIRECTOR GREER: For measure TN-M&R-7,
6 I move to remove enforcement mechanisms since this
7 measure achieves parity by design. This change will
8 make this measurement consistent with the treatment by
9 the Georgia and Florida Commissions.

10 DIRECTOR MALONE: Second.

11 CHAIRMAN KYLE: I'll wait till the end
12 to vote.

13 DIRECTOR GREER: All other motions for
14 reconsideration and clarification, whether submitted by
15 BellSouth or CLECs, should be denied.

16 CHAIRMAN KYLE: I'll hold my vote.

17 DIRECTOR MALONE: I agree.

18 DIRECTOR GREER: I am not persuaded by
19 BellSouth's assertion that several or an otherwise
20 unreasonable number of performance metrics are
21 correlated and thus I continue to support the
22 Authority's previously adopted remedy amounts
23 associated with performance metrics. I would note that
24 the Authority should examine data generated by the
25 adopted performance plan to determine what, if any,

1 meaningful correlation exists between performance
2 metrics and enforcement triggers during the Authority's
3 six-month review.

4 I also move that the Authority not
5 reconsider the 0.25 value of Delta previously adopted.
6 BellSouth has presented no evidence to demonstrate
7 actual experience with any value of Delta. As lack of
8 actual experience with different values of Delta was a
9 consideration in the Authority's original decision, no
10 justification for reconsideration of the Delta value is
11 provided by BellSouth's motion.

12 DIRECTOR MALONE: I agree as
13 concerning the Delta value. I agree totally as
14 concerning the Delta Value that there's no need for
15 reconsideration.

16 CHAIRMAN KYLE: I'll hold my vote till
17 the end.

18 DIRECTOR GREER: Turning to
19 implementation dates, I move to make the following
20 changes that are presented in more detail.

21 For measures currently in place in
22 Tennessee or other states, I move to adopt
23 implementation within ten days of the final order. For
24 measures that require modification for state-specific
25 reporting, I move BellSouth be given 90 days for

1 implementation. And for measures requiring extensive
2 modification by BellSouth, I move that the measures be
3 implemented by six months from the date of the final
4 order. I move that we consider changes to metrics
5 where the Authority adopted different levels of
6 disaggregation relative to BellSouth's proposal be
7 considered extensive modifications that fit into the
8 latter category of implementation deadlines which is
9 the six months.

10 DIRECTOR MALONE: As I understand it,
11 the ten days, BellSouth is already providing data under
12 those measurements in Tennessee, and that would make
13 the 10-day requirement not burdensome.

14 DIRECTOR GREER: I believe that to be
15 the case.

16 DIRECTOR MALONE: And with that
17 recognition, I will agree with those implementation
18 dates.

19 DIRECTOR GREER: Regarding the cost of
20 annual audits, I move that the Authority require
21 BellSouth to bear 50 percent of the audit costs with
22 the remaining 50 percent borne by all CLECs, not just
23 those party to this proceeding. I would also like the
24 Authority to clarify its previous decision to require
25 BellSouth to recover the CLECs' portion of the audit

1 costs through a nonrecurring charge for each local
2 service request submitted to BellSouth.

3 DIRECTOR MALONE: I will agree.

4 DIRECTOR GREER: And lastly, I find
5 reasonable BellSouth's request to change the time frame
6 for filing reports from 30 days to 45 days, and I move
7 to adopt those changes.

8 DIRECTOR MALONE: Based upon
9 BellSouth's representation that 45 days is provided in
10 other states, I will agree.

11 CHAIRMAN KYLE: I can see that some of
12 that takes in the Georgia plan, but let me state my
13 position.

14 In April I voted affirmative in the
15 performance measures document. And in that I said,
16 quote, I want to thank the parties involved and our
17 staff for an outstanding job. Of course, there's a lot
18 involved that will need ongoing attention and
19 adjustment. This docket is a step to move toward 271
20 approval and I see this as a great benefit to Tennessee
21 consumers. And I want you to know that I'm ready to
22 take steps necessary, steps that are appropriate to
23 work with the parties on adjustments that might be
24 needed from this decision today.

25 I will agree with the motion except

1 for the six-month review. I will work with the parties
2 on an as-needed basis. I think this is a road map for
3 CLECs and expectations for Bell which we can work
4 towards achieving.

5 The resolution of this docket adds
6 clarity and consistency and a smoother path for
7 competition in Tennessee, which is a goal of the
8 General Assembly and a goal of mine. I'm here to help
9 when the circumstances deem necessary. Thank you.

10 That's what I said at that point, and
11 at this time we've had reconsiderations. I do believe
12 that performance measures is a move towards 271, I am
13 ready to take those necessary steps to enact the goal
14 of the General Assembly.

15 The FCC has since approved Georgia's
16 271 application which includes performance measure
17 plans that meet the requirements for ensuring
18 nondiscriminatory access. Such plans can be reviewed
19 when necessary. The FCC has worked hard, and I believe
20 we should take judicial notice of their work. And I
21 also believe that time, money, and efforts by the staff
22 will be reserved for more efficient use and ultimately
23 benefitting the consumer.

24 Therefore, my position and motion is
25 to adopt the Georgia performance plan on an interim

1 basis for six months. We can monitor such plans to see
2 the effect. And should we need to modify or reinstate
3 the Tennessee plan, we can. If the plan is working, we
4 will have benefited all people concerned, especially
5 consumers, and not have created unnecessary measures
6 and will have lost nothing. That is my position for
7 the record.

8 I guess we're ready to move to the
9 next item.

10 (Conclusion of excerpt.)
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1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE)

3 COUNTY OF DAVIDSON)

4 I, Susan D. Delac, Registered Professional
5 Reporter, Certified Court Reporter, and Notary Public
6 for the State of Tennessee at Large, hereby certify
7 that I reported the foregoing proceedings at the time
8 and place set forth in the caption thereof; that the
9 proceedings were stenographically reported by me; and
10 that the foregoing proceedings constitute a true and
11 correct excerpt of transcript of said proceedings to
12 the best of my ability.

13 I FURTHER CERTIFY that I am not related to
14 any of the parties named herein, nor their counsel, and
15 have no interest, financial or otherwise, in the
16 outcome or events of this action.

17 IN WITNESS WHEREOF, I have hereunto
18 affixed my official signature and seal of office this
19 19th day of June, 2002.
20

21 SUSAN D. DELAC,
22 REGISTERED PROFESSIONAL
23 REPORTER, CERTIFIED COURT
24 REPORTER, AND NOTARY PUBLIC
25 FOR THE STATE OF TENNESSEE AT
LARGE

My Commission Expires:
25 July 24, 2004